

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

KENNETH JONES,

PLAINTIFF,

v.

**SULLIVAN SUPPLY SOUTH, INC.
AND SULLIVAN SUPPLY, INC.**

DEFENDANTS.

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CASE NO. 6 : 19 - cv - 184

NOTICE OF REMOVAL

**TO: THE UNITED STATES DISTRICT COURT FOR THE WESTERN
DISTRICT OF TEXAS, WACO DIVISION.**

Pursuant to 28 U.S.C §§ 1332, 1441, and 1446, Defendants Sullivan Supply South, Inc. and Sullivan Supply, Inc. (“Defendants”), by and through their undersigned counsel, hereby give notice of removal of the above-captioned action currently pending in the 66th Judicial District Court for Hill County to the United States District Court for the Western District of Texas, Waco Division. In support of their Notice of Removal, Defendants state and allege as follows:

BACKGROUND

1. On February 11, 2019, Defendants were served with a copy of the Summons and Complaint in an action entitled *Kenneth Jones v. Sullivan Supply South, Inc. and Sullivan Supply, Inc.*, Case No. CV057-19DC (the “Action”). The Action was filed in the 66th Judicial District Court for Hill County, Texas, on or about January 31,

2019. True and correct copies of the Summons and Complaint are attached hereto as **Exhibit A**. A copy of the Court's entire file in this matter is attached hereto as **Exhibit B**.

2. Plaintiff alleges in the Action that Defendants discriminated against him based on his disability and age and retaliated against him in violation of Chapter 21 of The Texas Labor Code.

3. ***Diversity Jurisdiction Basis for Removal.*** This case is a civil action over which the Court has original jurisdiction pursuant to 28 U.S.C. § 1332 and is one that Defendants may remove to this Court pursuant to 28 U.S.C. §§ 1441 and 1446, in that Plaintiff in this action is diverse in citizenship from each Defendant and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

4. ***Citizenship of Parties.*** Plaintiff is the sole identified plaintiff in this action. Upon information and belief, Plaintiff was a citizen of Hill County, Texas, at the time of the commencement of this action and, upon information and belief, is currently a citizen and resident of Hill County, Texas. (*See* Exh. A, ¶ 3.)

5. Defendants Sullivan Supply South, Inc. and Sullivan Supply, Inc. are the only identified defendants in this action. At the time of the commencement of this action, and continuing to the present, Defendant Sullivan Supply South, Inc. is an Iowa corporation with its principle place of business in Dunlap, Iowa. At the time of the commencement of this action and continuing to present, Defendant Sullivan Supply, Inc. is also an Iowa corporation with a principal place of business in Dunlap, Iowa.

6. Plaintiff is, therefore, diverse in citizenship from all Defendants so as to vest removal jurisdiction in this Court.

7. ***Amount in Controversy.*** This is a civil action wherein the amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.00. *See* 28 U.S.C. § 1332(a). The jurisdictional amount in controversy is satisfied because Plaintiff's plea for damages, if awarded, would result in recovery in excess of \$75,000. Plaintiff's Complaint alleges that he "seeks monetary relief over \$200,000 but not more than \$1,000,000." (Exh. A, ¶ 22.) Plaintiff further alleges he is entitled to exemplary damages in an amount to be determined by the jury. (Exh. A, ¶ 23.) Therefore, the amount-in-controversy in this case is at least \$200,000.00.

8. Based on Plaintiff's allegations, the amount-in-controversy requirement of 28 U.S.C. § 1332(a) is satisfied because it is facially apparent from the Complaint that the controversy exceeds \$75,000, exclusive of interest and costs. *See* 28 U.S.C. § 1446(c)(2).

9. ***Timing of Removal.*** Removal of this Action is timely pursuant to 28 U.S.C. § 1446(b) because fewer than thirty (30) days have elapsed since Plaintiff first served Defendants with the Complaint on February 11, 2019.

10. Defendants' Notice of Removal is properly directed to this Court pursuant to 28 U.S.C. § 1446(a) as the United States District Court for the Western District of Texas, Waco Division, embraces the county in which this Action is currently pending.

11. Concurrent with the filing of this Notice of Removal, Defendants have notified the 66th Judicial District Court for Hill County Texas of the removal of this action. No other process, pleadings, or orders have been served or filed in this action.

12. True and correct copies of this Notice (with accompanying exhibits) and the Notice of Filing Notice of Removal in state court are contemporaneously being

served upon Plaintiff's counsel and filed with the Clerk of the Court of the 66th Judicial District Court for Hill County, State of Texas, in accordance with 28 U.S.C. § 1446(d). A true and correct copy of the Notice of Filing of Notice of Removal is attached hereto as **Exhibit C**.

WHEREFORE, Defendants Sullivan Supply South, Inc. and Sullivan Supply, Inc. respectfully request that all further proceedings in this Action, previously pending in the 66th Judicial District Court for Hill County, State of Texas, hereafter be conducted in the United States District Court for the Western District of Texas, Waco Division. Should any question arise as to the propriety of this removal, Defendants respectfully request an opportunity to provide briefing and oral argument.

Dated: March 4, 2019

/s/ Jeremy D. Sosna
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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of March, 2019, the foregoing was filed with the Clerk of Court using the CM/ECF system, and was served on counsel:

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